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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,410	11/12/2003	Jerry Joe Wolfe JR.	102-1189	6794

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J. Nevin Shaffer, Jr.  
Suite 43  
913 Gulf Breeze Parkway  
Gulf Breeze, FL 32561

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/706,410

**Applicant(s)**

WOLFE ET AL.

**Examiner**

Kimberly S Smith

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 22 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/15/04.

### *Specification*

2. The disclosure is objected to because of the following informalities: page 6, line 13, replace "bal" with - -ball- -.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 4, 14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 2 and 14 recite the limitation "element a)" in line 1. There is insufficient antecedent basis for this limitation in the claim.

6. Regarding claims 4 and 17, it is unclear as to how the at least one opening may include a funnel section for funneling items to the at least one opening? How is an opening capable of funneling items to itself?

***Claim Objections***

7. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The independent claim is directed towards a container apparatus for containing items. The term "for containing items" is a recitation with respect to the manner in which a claimed apparatus is intended to be employed. As such, the limitation that the items are edible does not further limit the independent claim regarding a container apparatus.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3, 7, 13 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nasser, US Patent 6,109,210.

Regarding claims 3 and 16, it can be clearly seen in Figure 2 that the interior form is located below the horizontal centerline of the exterior form and is therefore offset from a center location of the exterior form.

10. Claims 1, 5-7, 9-13, 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang, US Patent 6,073,581

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Wang discloses a container comprising an exterior form (3, 4) surrounding an interior form (defined by sections 36, 37), having at least one opening in the interior form (i.e. 30, 40) and at least one opening in the exterior form (33, 34)

Regarding claim 5, Wang discloses a removable cap (21).

Regarding claim 6, the removable cap of Wang is capable of being eaten and therefore is considered to be edible.

Regarding claim 9, Wang discloses the exterior form including an interior recess(34) for retaining a removable cap.

Regarding claim 10, Wang discloses the use of two openings.

Regarding claim 11, Wang discloses the at least one opening in the interior form comprises two openings.

Regarding claim 12, reference claims 10 and 11 above.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang, US Patent 6,073,581 in view of Rucker, US Patent 6,634,318.

Wang discloses the invention as claimed including a cap that is capable of being eaten. Rucker teaches within the analogous art of animal closures that closures for feeding toys may be

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created from a material that may be more palatable to an animal to make the feeding toy more attractive to the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a palatable material as taught by Rucker with the device of Wang in order to produce a more enticing feeding toy to the animal.

13. Claims 8 and 15, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nasser, US Patent 6,109,210 in view of Maudlin, Jr. (US 5,813,366).

Regarding claims 8 and 20, Nasser discloses the invention substantially as claimed. However Nasser does not disclose the use of at least one flap. Maudlin teaches within the same field of animal feeding devices the use of a flap (12) for limiting the size of the opening dependent upon the size of the food being distributed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Maudlin's flap with the device of Nasser to allow for varying sizes of feed to be distributed.

Regarding claim 15, Nasser discloses the invention with the exception of the sinuous raised edge on the exterior of the ball. Maudlin teaches the use of a sinuous raised edge on the exterior of the ball to encourage play and use in the event the food product is absent. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the sinuous raised edge as taught by Maudlin to encourage play of the animal in the absence of food product.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER